

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KONATA MATTHEWS,)	
)	Civil Action No. 11 – 221J
Plaintiff,)	
)	Chief Magistrate Judge Lisa Pupo Lenihan
v.)	
)	ECF No. 18
JEFFREY BEARD, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

IT IS ORDERED that Defendants’ Motion to Dismiss (ECF No. 18) is **GRANTED** as follows:

1. Counts 1-2 are dismissed with prejudice to the extent Plaintiff brings his claims pursuant to 42 U.S.C. § 1981. These Counts are also dismissed with prejudice to the extent Plaintiff’s claims are based upon verbal harassment and threats because offensive language alone does not give rise to a constitutional claim by itself. However, Plaintiff is granted leave to file an Amended Complaint in accordance with the findings contained in section C(1)(b) of the Court’s Memorandum Opinion (ECF No. 49).

2. Count 3 is dismissed without prejudice and Plaintiff is granted leave to file an Amended Complaint to correct the deficiencies outlined in section C(2) of the Memorandum Opinion.

3. Counts 4, 5 and 12 are dismissed with prejudice as criminal statutes do not create a private right of action.

4. Plaintiff's state law claims contained in Counts 6-11 and 13 are dismissed with prejudice because Defendants are entitled to sovereign immunity and the record is clear that they were acting within the scope of their employment when the alleged violations occurred.

5. Plaintiff's claims of supervisory liability contained in Count 14 are dismissed with prejudice. However, Plaintiff is permitted to file an Amended Complaint in accordance with the findings contained in section C(5) of the Memorandum Opinion.

6. Plaintiff's claims of civil liability contained in Count 15 against Defendants Boyd, Thomas, Smith, Myers, Bearer, Zubur, and Yeager are dismissed because they are deficient as plead. Additionally, Plaintiff's claims against these Defendants in this Count are duplicative of claims previously addressed and are disposed of in the manner in which they are addressed elsewhere in the Memorandum Opinion. To the extent, however, he is seeking to impose liability under some other law not addressed herein, Plaintiff is permitted to file an Amended Complaint in accordance with the findings contained in section C(6) of the Memorandum Opinion. If he chooses to do so, he should identify each claim by name and state under what law he is bringing such claim.

7. Plaintiff's failure to discipline claims against Defendants Thomas and Beard contained in Count 15 are dismissed with prejudice for failure to state a claim as it is clear that any attempt on Plaintiff's part to amend would be futile.

8. Plaintiff's Complaint is dismissed in its entirety against Defendant Boyd as he is not a state actor and entitled to absolute immunity, and Defendant Boyd will be terminated from this action.

Plaintiff shall file his Amended Complaint no later than **July 16, 2012**. If Plaintiff fails to file an Amended Complaint within the time allowed, his remaining claims will be dismissed with prejudice and the Court will enter an Order closing this case.

Dated: June 14, 2012

/s/ Lisa Pupo Lenihan
Lisa Pupo Lenihan
Chief United States Magistrate Judge

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